Local 32B–32J, Service Employees International Union, AFL–CIO *and* The Vaux Condominium *and* The Olmsted Condominium *and* The 392 Central Park West Condominium *and* The 400 Central Park West Condominium. Cases 2–CB–14180, 2–CB–14181, 2–CB–14182, and 2–CB–14183

November 23, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

The issue in this case is whether the judge correctly found that the Respondent's request to arbitrate a grievance concerning the layoff of the exterior security guards at the above-referenced condominiums did not violate Section 8(b)(3) of the Act.[1]

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

[1] On June 29, 1993, Administrative Law Judge Eleanor MacDonald issued the attached decision. The Charging Parties and counsel for the General Counsel filed exceptions and supporting briefs. The Respondent filed a memorandum of law in opposition to exceptions to which the Charging Parties filed a reply memorandum.

Ruth Weinreb, Esq., for the General Counsel.
Ira A. Sturm, Esq. (Manning, Raab, Dealy & Sturm), of New York, New York, for the Respondent.
Neal Korval, Esq. (Vedder, Price, Kaufman, Kammholz & Day), of New York, New York, for the Charging Parties.

DECISION

STATEMENT OF THE CASE

ELEANOR MACDONALD, Administrative Law Judge. This case was tried in New York, New York, on September 21, 1992. The complaint alleges that Respondent, in violation of Section 8(b)(3) of the Act, sought to arbitrate a grievance which would have the effect of compelling the four Charging Parties to recognize the Union as the representative of a single merged unit of building service employees and security guards notwithstanding that the Charging Parties are not the employers of the security guards. In the alternative, the complaint alleges that if the Charging Parties are found to be a joint employer with the employer of the guards, the demand for arbitration seeks to compel a joint employer to recognize the Union as the representative of a single, merged unit including building service employees and security guards notwithstanding that the units are separate. The Union denies that it has violated the Act and asserts that it is lawfully seeking to enforce a subcontracting clause of its collective-bargaining agreement.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Respondent, and the Charging Parties in October 1992, I make the following[1]

FINDINGS OF FACT

I. JURISDICTION

It is undisputed, and I find, that the Vaux Condominium, the Olmsted Condominium, the 392 Central Park West Condominium and the 400 Central Park West Condominium are employers within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

Park West Village, a 7-building complex on the upper west side of Manhattan, was constructed a number of years ago and eventually came to be owned by Park West Village Associates. Most of the buildings are 19 stories high. The grounds include parking lots and tennis courts. The four buildings which are relevant to the instant case were converted to condominium ownership at various times, as is more fully described below. The Vaux Condominium is located at 372 Central Park West and the Olmsted Condominium is located at 382 Central Park West; these buildings are adjacent to the other two buildings at issue herein which are located at 392 and 400 Central Park West.

Prior to conversion to condominium ownership, the buildings were managed by Park West Management Corp., a subsidiary of Park West Village Associates. Park West Management Corp. provided management services to all seven buildings in the complex.

Park West Village Associates is a member of the Realty Advisory Board on Labor Relations (the RAB), a management association of residential building owners. The RAB negotiates collective-bargaining agreements with the Respondent Union, and Park West Village Associates has regularly signed assents to the contracts.[2] The assent form states that the owner and employer assent to the terms of the collective-bargaining agreement and agree to comply with the obligations for membership in the RAB.

The successive collective-bargaining agreements with the Union define the unit as ''all classifications of service em-

[1] The record is corrected so that at p. 251, L. 13, the statement is made by Sturm.

[2] The assents list Park West Village Associates as the Owner and Park West Management Corp. as the Employer. The instant complaint states that Park West Management Corp. is an employer and it is silent on the status of Park West Village Associates. Park West Management Corp. is a subsidiary of Park West Village Associates; when the buildings were converted to condominiums, it was Park West Village Associates that assigned the union contracts to the new condominiums. The evidence shows that Park West Village Associates and Park West Management Corp. are joint employers.

ployees at each apartment building.'' Each of the seven buildings was considered a separate unit.[3]

For many years, each building had been serviced by a resident superintendent, a handyman, and four or five porters. In addition, security was provided by uniformed employees who patrolled the grounds of Park West Village; these exterior security patrol employees would enter the buildings if called to deal with a problem experienced by a tenant. It is undisputed that the exterior patrol employees were covered by the collective-bargaining agreement and were part of the same unit as the other employees who worked at Park West Village. The complaint calls these employees ''security guards'' but there is very little evidence as to their actual duties. In any case, I am not called on to make a finding whether they are guards under Section 9(b)(3) of the Act. General Counsel's witnesses testified that for many years there had been no front door security in the buildings of Park West Village and that each tenant had a key to the front door.

Beginning in June 1987, Park West Village Associates sponsored the conversion of the four buildings to condominium status. This conversion was conducted pursuant to the New York State Condominium Act.[4] The Act provides generally that a purchaser of a condominium apartment owns the unit in which he lives and owns a share of the land, structures, and facilities held in common with all other owners. A board of managers, elected by the unit owners, is responsible for the operation and maintenance of the condominium property. When a property is first converted to condominium ownership, the sponsor retains ownership of the units which it has not sold to tenants or other buyers. Because a condominium conversion plan can be declared effective after at least 15 percent of the units have been sold to tenants, it is apparent that for many years after that the sponsor may still retain ownership of a majority of the units if sales are slow.[5] In the instant case, the conversion to condominium status was pursuant to a ''noneviction plan'' so that non purchasing tenants could continue to occupy their apartments indefinitely and they would continue to pay rent to Park West Village Associates as the owner of their units. In fact, the documents in evidence show that in April 1988, only 17 percent of the combined total of apartments in the Olmsted and the Vaux Condominiums were no longer owned by Park West Village Associates.

It is apparent that in the case of the four buildings at issue, Park West Village Associates continued as the owner of a majority of the units for some time and, by virtue of its voting strength, it could have continued to control the board of managers of each condominium building until such time as it had sold over 50 percent of the apartments in each building. However, the offering plan of each building provided a time beyond which the sponsor would no longer elect a majority of the board of managers, and in the case of the building at 392 Central Park West, the sponsor gave up control of the Board at the first annual meeting.[6] The record does not indicate when Park West Village Associates ceased electing a majority of the board of managers at the other buildings.

The record shows that the Olmsted Condominium and the Vaux Condominium conducted the first closings of apartments with purchasers in June 1987. The first closings for units in the 392 Central Park West and 400 Central Park West Condominiums took place in January 1991. For purposes of this decision, therefore, the Olmsted and Vaux converted to condominium ownership in June 1987, and the 392 and 400 buildings converted in January 1991.

The offering plans for each of the four condominiums specified that the newly established condominiums would retain the firm of Brown, Harris, Stevens, Inc. as managing agent for at least 3 years following the conversion to condominium status. Brown, Harris, Stevens is related to Helmsley Enterprises, Inc. in some fashion that is not explained on the record. Another related company, Helmsley Spear, Inc. is the parent company of Park West Management Corp. and is also related to Park West Village Associates. It is agreed by the parties that Brown, Harris, Stevens is the agent of each of the four condominiums for labor negotiations and supervises the buildings' operations and employees.

Before a condominium can be sold in New York State, the State Attorney General must approve a lengthy and detailed offering plan that adequately informs potential unit purchasers of the terms of the sale. The offering plan of each of the buildings specified that the condominium would hire certain employees: the superintendent, a handyman, four janitors, and four ''security (door/lobby) personnel.'' All but the security (door/lobby) personnel were already on staff as employees of Park West Village. The projected budget filed as part of the offering plan stated that all of these employees were members of the Union. For the Olmsted and the Vaux, the offering plan stated that the budget was based on the existing labor contract with a term ending April 1988, and for the 392 and 400 Central Park West buildings, the budget was stated to be based on the existing contract with an expiration date of April 1991.

According to Ralph Walter, president of the board of managers of the Olmsted Condominium, the people hired as ''security (door/lobby) personnel'' are now called ''concierges.''[7] These employees sit at the desk in the lobby to intercept and receive people coming into the buildings and then announce visitors to the apartments by means of an intercom; the concierges scan the monitors which show all the activity being captured by the various security cameras throughout the area. The concierges also receive packages for the tenants. The payroll timesheets maintained by Brown, Harris, Stevens for each of the four condominiums show that they paid the wages of condominium employees in titles such as ''superintendent,'' ''handyman,'' ''porter,'' ''concierge,'' and ''security.'' The term ''concierge'' is used on the records for three buildings and the term ''security'' is used on the records of the Olmsted Condominium. I conclude that the title concierge and the title security were interchangeable.

[3] At the hearing, all the parties agreed that ''it's a building by building unit.'' General Counsel did not offer proof to the contrary.

[4] N.Y. Real Property Law, Art. 9-B, cited as N.Y. REAL PROP. Sec. 339 (McKinney 1989).

[5] Those who sign contracts to purchase units do not actually hold a closing and take title until the condominium plan is declared effective.

[6] The witness did not specify what year this was.

[7] Concierge is the word for ''an attendant at the entrance of a building: DOORKEEPER; esp: a resident attendant in a French building who oversees ingress and egress.'' Webster's Third New International Dictionary (Merriam-Webster 1981).

The offering plan for each building specified that each building would retain Park West Management Corp. to provide the ''exterior security patrol'' for at least 1 year after the conversion to condominium status. The projected budget stated costs for the exterior security patrol and the budget notes included the information that these employees were paid on the same basis as the interior employees, that is they were subject to the union contract. After conversion to condominium ownership, Park West Management billed each condominium for the security services. According to Walter, the exterior security patrol was not posted at any particular building but rotated around the whole complex responding to tenants' calls inside the buildings.[8] This was identical to the situation prior to the conversion to condominium ownership.

On conversion of the buildings to condominium status, that is after the first sale of a unit in each building, the boards of the new condominiums signed agreements assuming the union contract and Park West Village Associates assigned the contracts to the newly formed entities.[9] The Assignment and Assumption Agreements provided that Park West Village Associates (Assignor), assigned the agreement ''with respect to all building employees employed . . . at the premises'' and that the condominium (Assignee), ''assumes the performance of all of the terms . . . and hereby agrees to (i) offer employment to all of the union employees which are employed by the Assignor at the Premises as of the date hereof, and (ii) perform all of the terms . . . as if Assignee had signed the Agreement originally as the landlord named therein.''

Thereafter, as successive 3-year collective-bargaining agreements were negotiated by the Union and the RAB, the condominiums signed assents to the new contracts. On May 26, 1988, the Olmsted and the Vaux separately filed their assents to the April 21, 1988, to April 21, 1991 contract. On May 29, 1991, the four buildings, by now all converted to condominium ownership, signed four separate assents to the 1991–1994 collective-bargaining agreement.[10]

Walter testified that the board of the Olmsted Condominium decided to terminate the contract with Park West Management Corp. because it was not satisfied with the exterior security patrol services. Walter did not provide any details concerning the dissatisfaction. Alan Mantell, president of the board of managers of the 392 Central Park West Condominium, testified that in late 1991 he met with the presidents of the three other condominiums and they decided that the condominiums would jointly and simultaneously hire a new security company in order to realize economies of scale. However, Mantell stated that he did not know if the new company charged less than Park West Management for the exterior guard patrols. On January 14 and 15, 1991, the four condominiums sent letters to Park West Management Corp. terminating ''the Sponsor provided security service as of February 29, 1992.''[11]

The testimony of the witnesses shows that prior to sending the letters of termination, Walter had informed Park West Management Corp. that the contracts for external security patrol would be terminated and Walter and the other condominium presidents discussed the layoff of exterior security patrol employees with Park West Management. The presidents were told that the union contract required advance notice for the termination of employees. The minutes of the meeting of the board of managers of the Olmsted Condominium held on November 18, 1991, state that the proposal from Hall Security has been accepted. ''Starting date will depend on regulations regarding union employees and their termination. Hall Security service will include 2 guards/day shift; 3 guards/night shift (1 fixed post).'' Walter testified that at the meeting, the board members discussed the fact that Park West Management Corp. had informed them that under the union contract with the employees, a notification period in advance of termination was required. Thus, it was not clear when the contract with Hall Security would take effect. Eventually, the condominiums gave Park West Management 45 days written notice of termination so that Park West Management could provide notice to the Union. Deborah Dowell, the property manager at Brown, Harris, Stevens responsible for managing the condominiums, also discussed the layoff of employees with Park West Management Corp.

In February 1992, the condominiums entered into a contract with Hall Security to provide the exterior security patrol.

On January 26, 1992, Park West Management Corp. informed the Union that the security department at Park West Village would be reduced due to the decision by the four condominiums to cancel their security contracts with Park West Management Corp. The Union was later told that at least six security personnel would be terminated as of March 1, 1992. Thereafter, in separate letters to each of the condominiums, the Union requested arbitration pursuant to the collective-bargaining agreement. The requests for arbitration named the employer in each case as the individual condominium. The requests stated:

> The . . . contract requires that four weeks written notice be given to the Union of any reduction in staff. In addition, the contract requires that the grounds for the reduction be submitted to the Union. This information was not included.
>
> It has been brought to our attention that the work previously performed by security employees covered by the collective bargaining agreement is now being performed by employees of Hall Security who are not receiving the contractual wages and benefits required by

[8] The budget contained in the offering plan for the Olmsted Condominium specified that $66,600 was to be paid to Park West Management for exterior security patrol which was to be ''maintained at the current level presently provided to the Building'' of 4380 man hours per year.

[9] The record contains only the Assignment and Assumption executed by the Olmsted. However, the offering plans for all four buildings, which are identical in their essential verbiage and organization, indicate that the employees are covered by the union contract. The projected budgets in each offering plan proceed on the basis of annual contract wage increases, a sure indication that the condominiums would be bound by the union contracts. Further, since the same sponsor converted all four buildings and since the assumption document would have been one of a myriad of required documents for all four conversions, I shall assume for purposes of this decision that the same assumption was agreed to by all four condominiums.

[10] After a strike, a successor agreement had been reached with a starting date of May 2, 1991.

[11] The letters were actually addressed to Helmsley Spear, Inc., the parent company of Park West Management Corp. and the actual work location of the person who dealt with the condominiums on behalf of Park West Management Corp.

the Local 23B–32J contract. It is the position of the Union that the terminated employees be reinstated immediately without loss of pay and that the employees on the payroll of Hall Security must receive the Local 32B–32J wages and benefits.

The 1991 collective-bargaining agreement provides in article II thereof for subcontracting. Relevant portions provide as follows:

> 1. The Employer shall not make any agreement or arrangement for the performance of work and/or for the categories of work heretofore performed by employees covered by this agreement except within provisions and limitations set forth below.
>
> . . . .
>
> 3. The Employer shall require the contractor to retain all bargaining unit employees working at the location at the time the contract was awarded and to maintain the existing wage and benefit structure. . . .
>
> The Employer agrees that employees then engaged in the work which is contracted out shall become employees of the initial contractor or any successor contractor, and agrees to employ or re-employ those employees working for the contractor when the contract is terminated or cancelled. . . .
>
> If the contractor fails to comply with any agreement with the Union covering the work which was contracted out, the Employer shall be liable severally and jointly with the contractor. . . .
>
> 4. This article is intended to be a work preservation provision for the employees employed in a particular building. . . .

B. *Positions of the Parties*

General Counsel takes the position that the employees of each of the four condominiums constitute a separate bargaining unit and that these units do not include the exterior security patrol employees heretofore employed by Park West Management Corp. General Counsel maintains that the Union is seeking arbitration to compel the enlargement of each of the bargaining units, or to compel the four employers to apply their collective-bargaining agreements to nonbargaining unit employees.

General Counsel maintains that the evidence shows that Park West Management Corp. employed the exterior security employees in a unit including all the service employees in Park West Village. After conversion of four of the seven buildings to condominium ownership, Park West Management Corp. continued to employ the exterior security employees and was their only employer. Park West Management Corp. decided to reduce the number of exterior security patrol employees it employed and informed the Union of the impending layoff. According to General Counsel, only Park West Management Corp. had the authority and power to affect the terms and conditions of employment of the exterior security employees; the condominiums had no role in deciding a layoff was necessary.[12] General Counsel states that the Union was aware that Park West Management Corp. was the only employer of the exterior security patrol. General Counsel relies on the fact that Brown, Harris, Stevens, Inc., the managing agent for the four buildings after they converted to condominium ownership, did not carry the exterior security employees on its payrolls, and did not hire, fire, or discipline them.

General Counsel asserts that the four condominiums do not employ any security employees and that the concierges are not security employees. Although General Counsel's brief states that when a tenant has a security problem, he contacts the exterior security patrol and not the concierge, this specific question was not addressed at the hearing, and I cannot find that a tenant does not contact the concierge is he has a security problem.

General Counsel asserts that from the time the condominiums were established, the units of condominium employees have existed separate from the unit of Park West Management employees. General Counsel maintains that the assents signed in 1988 by the Vaux and Olmsted and the assents signed in 1991 by the 392 and 400 Central Park West Condominiums show that the condominiums established new and separate units of employees with the consent of the Union.[13]

General Counsel denies that the assumption of the Park West Village Associates contract by the condominiums shows that the new condominiums were required to hire all the Park West Village employees including the exterior security patrol. General Counsel urges that by referring to ''employees employed . . . at the premises,'' the assumption excluded the exterior security patrol employees because they were not stationed at a particular building but roamed from one building to the next. General Counsel points out that the offering plan for each condominium required that Park West Management Corp. was to be hired to perform exterior security patrol and that this is further proof that the individual condominiums did not employ the security patrol employees. Concluding that no employees of the condominium ever performed exterior security work, General Counsel asserts that the grievance does not have a lawful work-preservation object.

The Union relies on article II of the collective-bargaining agreement which regulates subcontracting of work ''performed by employees covered by this agreement.'' The Union argues that the external security patrol work was always covered by the agrement. The Union points out that even though the condominiums have contracted out the performance of exterior security patrols, they retain control over the assignment of the work. According to the Union, the collective-bargaining agreement permits subcontracting but only in accordance with its specific terms. These terms include the payment of the contractual wages and benefits, although there is no requirement that the new subcontractor sign the contract.

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[12] General Counsel's brief states that the testimony shows that the condominiums never discussed the layoff with Park West Management Corp., but this assertion is contrary to the evidence and testimony herein.

[13] General Counsel states that the collective-bargaining agreement provides that ''a building becomes a new entity upon conversion.'' The portion of the contract relied on by General Counsel, art. IX, sec. 1 (d), deals with the timing of the required assent by newly established condominiums and does not purport to establish rules governing units. The contract does not use the term ''new entity,'' and I do not find merit in General Counsel's reliance on this contract clause.

The Union points out that the collective-bargaining agreement provides that employees performing security work are part of the unit. The Union argues that this recognition cannot be attacked by any charge filed more than 6 months after April 21, 1991, the effective date of the contract. Even if the charge is timely, the Union urges that security work is fairly claimable by the Union because the condominiums control the assignment of security work.

Citing *Bill Johnson's Restaurants v. NLRB*, 461 U.S. 731 (1983), the Union argues that filing a grievance and request for arbitration in this instance cannot be found to violate the Act. The grievance does not seek an illegal objective because the contract provision sought to be enforced does not violate Section 8(e). The Union is not seeking jurisdiction over the work assignment herein. Further, according to the Union, there is a reasonable basis under the law and the contract for the grievance.

The Union urges that under *NLRB v. Burns Security Services*, 406 U.S. 272 (1972), the condominiums are successors who have purchased the stock and assets of the predecessor and are thus bound by all the terms of the predecessor's collective-bargaining agreement with the Union.

Finally, the Union contends that it need not prove that its arguments ''are absolutely meritorious,'' only that there is a reasonable basis in law for pursuing the grievance.

The Charging Parties argue that the Union is seeking to force the condominiums to cease doing business with Hall Security. This violation is different from the one alleged in the complaint by the General Counsel and, of course, I shall make no finding respecting it.

C. *Discussion and Conclusions*

The General Counsel's theory of the case is simple; the Union violated Section 8(b)(3) by seeking to arbitrate its grievance over subcontracting of the outside security patrol work. The demand for arbitration sought an unlawful result, namely, the merging of hitherto separate bargaining units. In order to find a violation herein, I must find that there were indeed historically separate bargaining units. If I find that no such separate units were established and recognized, then I cannot find that the Union violated the Act as alleged by the General Counsel. If the evidence does not show that the condominiums and the Union agreed to units excluding exterior security patrol employees, then it would not be unlawful for the Union to pursue a demand for arbitration seeking remedies under the collective-bargaining agreement with respect to the subcontracting of exterior patrol work.

The facts recited in the earlier part of this decision show that in the past all employees who performed the work at Park West Village were employed by Park West Village Associates and Park West Management Corp. Some of these employees provided an exterior security patrol and responded to tenant concerns inside a building when requested to do so. There was no security at the front doors of the buildings to keep unauthorized persons from entering. Instead, the doors were locked and each tenant had a key to the front door. The collective-bargaining agreement defined the unit in terms of employees ''at each apartment building'' and each of the seven buildings was considered a separate unit. In June 1987, the Olmsted and Vaux condominium plans became effective and Park West Village Associates began selling units to individual tenants. For some time, Park West Village Associates owned the majority of units in each of these two buildings and elected the majority of the board of managers of each building. The condominiums retained all the interior employees on their respective payrolls and hired ''security (door/lobby) personnel'' who were carried on the payrolls as either ''security'' or ''concierge.'' The condominiums contracted with Park West Management Corp. to provide exterior security patrols. In January 1991, the process of sales of condominium units was repeated for 392 and 400 Central Park West. During the entire time from June 1987 to February 1992, all the employees at Park West Village continued to be paid pursuant to the Union's collective-bargaining agreement whether they were on the payrolls of the condominiums or of Park West Management Corp.

General Counsel's theory is that on the beginning of the condominium sales for each building, that building became a different unit from the one it had been before. Because each building did not pay exterior patrol employees on its own payroll but instead contracted for the exterior security work, General Counsel urges that the Union and each building had therefore agreed that security employees would henceforth be excluded from the unit. As part of this argument, General Counsel urges that the security (door/lobby) personnel mentioned in the offering plans and hired by each condominium are not security employees because they are now called ''concierges.'' I note that on the payroll of the Olmsted condominium, these employees are indeed listed as security. However, it is immaterial what these employees are called or whether they are guards under the Act. The fact is, they are described as providing security by the legal documents that were required for the condominium conversions, and the evidence shows that they do indeed provide security. The so-called concierges sit at a desk in the lobby of the building to intercept and receive people entering the building and announce the visitors to tenants. They also scan monitors connected to building security cameras. It is a matter of common knowledge and thus may be made a matter of administrative notice, that residents of buildings in Manhattan are subject to having their apartments broken into and are subject to being mugged and robbed in the hallways and elevators of their buildings. A locked door provides very little security because it may be forced and because tenants often unwittingly admit criminals thinking they are mere visitors.[14] Any employee who sits in a lobby is there to prevent uninvited strangers from entering a building and engaging in criminal behavior. The security (door/lobby) personnel are clearly there to question each stranger entering a building and they use an intercom so that tenants can inform the lobby whether the stranger is known to them and should be permitted to enter. Further, the purpose of scanning the security cameras is not to satisfy the curiosity of the concierges nor to keep them from being bored: the security cameras are there to provide security by alerting the concierges to suspicious sights in areas of each building. I find that when it hired security (door/lobby) personnel, sometimes called concierges, each condominium hired employees who provide security to tenants. Thus, at all times, the units herein included employees who provided security and it cannot be concluded that the

[14] This occurs in various ways not necessary to describe here.

Union and the condominiums agreed to units which did not include security employees.

As to General Counsel's argument that the Union and the condominiums agreed that the units would not include exterior security patrol employees, I do not find that General Counsel has proven this contention. The mere fact that the four condominiums contracted for the performance of exterior security services does not prove that the unit was changed; the Union viewed the situation as a subcontracting situation under the collective-bargaining agreement.[15] The language of the contract which refers to the unit as including ''all employees at each apartment building'' does not by its terms exclude security employees who circulate on patrol. The collective-bargaining agreement does not specify that unit employees must be assigned to a specific building location as a fixed post; if it did, the exterior security patrol employees employed by Park West Village Association before conversion to condominium ownership would not have been covered by the contract, a result contrary to the evidence herein.

Further, the assumption agreement provided that the new condominiums would ''offer employment to all of the union employees which are employed by the Assignor at the Premises . . . and perform all of the terms.'' This language does not specify that the employees must be ''stationed'' at each building as General Counsel urges. The term ''employed . . . at the Premises'' is broad enough to encompass a security patrol outside a building.

Although I am assuming for purposes of this decision that all four condominiums, and not just the Olmsted, signed the assumption agreement, my conclusions would be the same absent any written assumption agreement. It is clear that each of the condominiums, as successor employers, adopted and assumed the collective-bargaining agreement. Each condominium offering plan contained the information that the employees were covered by the union contract and the budget was predicated on continued payment of Union wages and benefits. All the record evidence and the arguments of the parties show that the condominiums considered themselves bound by the current collective-bargaining agreement at the time of conversion to condominium ownership. *NLRB v. Amateyus, Ltd*., 817 F.2d 996, 998 (2d Cir. 1987), enfg. sub nom. *Volk & Huxley*, 280 NLRB 219, 226 (1986). The Union urges that under *NLRB v. Burns Security Services*, supra, the condominiums are bound by virtue of their purchase of the stock and assets of the predecessor. However, I need not consider that argument in view of my finding that the condominiums, by their actions, adopted and assumed the union contract. Moreover, the record is not complete to the extent of permitting a finding concerning the stock and asset purchase.

[15] I find no significance in the fact that the condominium offering plans and budgets show that door/lobby security employees would be on the payroll but that the exterior security patrol would be obtained by contract with Park West Management. The offering plans clearly show that the condominiums were obligated to supply the same exterior security patrol services to tenants as heretofore. Nothing in the offering plans shows that the condominiums would never employ exterior security employees in the future; the plans show only that a contract was to be entered into with Park West Management.

It is clear on the record before me that the condominiums retain the right to control the work of providing an exterior security patrol. Neither the General Counsel nor the Charging Party have argued that the condominiums, if they saw fit, could not resume providing exterior security patrols using employees on the condominiums' payrolls instead of employees on the payroll of an outside contractor.

General Counsel concedes that under *Bill Johnson's Restaurants v. NLRB*, 461 U.S. 731 fn. 5 at 737 (1983), the Board may not enjoin the Union's pursuit of arbitration under the collective-bargaining agreement unless the arbitration has an objective that is illegal under Federal law. General Counsel urges that in the instant case, the merger of two separate units is the unlawful objective. The cases relied on by General Counsel to support the view that the Union and the condominiums had agreed to units excluding exterior security patrol employees and that the Union is now unlawfully attempting to merge the security employees into the condominium units by its demand for arbitration are clearly distinguishable. In *Electrical Workers IBEW Local 323 (Active Enterprises)*, 292 NLRB 305 (1979), the evidence supporting the finding of separate units was the signing by the employer and the union of two separate contracts with different expiration dates for employees in different titles with different duties and different rates of pay. In the instant case, the contracts with the condominiums merely state that all employees at each building are included in the unit and the Union took no action inconsistent with its position that it has always claimed the work of the exterior security patrol as part of the unit. *Service Employees Local 32B-32J (Allied Maintenance Corp.)*, 258 NLRB 430 (1981), is distinguishable on the same grounds: the Union in Allied took actions to show that it was bargaining for employees in two separate units such as separate negotiations, a strike for a contract in one unit, and agreement to a contract for one unit with implementation of some of the terms. In *Chicago Truck Drivers (Signal Delivery Service)*, 279 NLRB 904 (1986), the union had bargained for years with different employers for four different contracts with different seniority lists covering different locations. In both *Teamsters Local 952 (Pepsi-Cola Bottling Co.)*, 305 NLRB 268 (1991), and *Teamsters Local 776 (Rite Aid Corp.)*, 305 NLRB 832 (1991), the Board itself had previously found that separate units existed. In the instant case, the Board has not issued a unit determination that exterior security patrol employees are excluded from the units of condominium employees. Finally, *Teamsters Local 705 (Emery Air Freight)*, 278 NLRB 1303 (1986), involved a violation of Section 8(b)(4)(ii)(B) of the Act, including picketing and striking to force an employer whose employees had never done the subcontracted work to cease doing business with a subcontractor who was not under contract with the striking union. The complaint does not allege a violation of Section 8(b)(4) of the Act and the Union here does not demand that the condominiums cease doing business with Hall Security.[16]

It should be noted that a decision that the Union has not violated the Act as alleged by General Counsel in no way

[16] The grievance does not seek that the exterior patrol work be given to a company that has a contract with the Union nor does it ask that Hall Security sign a contract with the Union. The union demand tracks the language of the contract which requires existing employees at the location to be retained at the existing wages and benefit structure.

decides the merits of the Union's grievance. It is up to the arbitrator to decide what the contract requires and whether it has been violated. The instant case only decides whether the Union has unlawfully sought to merge two separate bargaining units by means of a demand for arbitration. I have found herein that the Union and the condominiums did not, as urged by General Counsel, agree to exclude the exterior security patrol employees from the existing units.

CONCLUSIONS OF LAW

The General Counsel has failed to prove that the Union engaged in any violation of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[17]

ORDER

The complaint is dismissed.

[17] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.